

Supplemental Final Order Denying Refund: 04-20160690R
Sales Tax
For the Tax Years 2013, 2014, and 2015

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Supplemental Final Order Denying Refund.

HOLDING

Company failed to provide sufficient documentation to show that the mist collector was exempt safety equipment.

ISSUE

I. Sales and Use Tax - Safety Exemption.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-3-1; IC § 6-2.5-3-2; IC § 6-2.5-5-3; IC § 6-2.5-3-4; IC § 6-8.1-5-1; Dep't of Revenue v. U.S. Steel Corp., 425 N.E.2d 659 (Ind. Ct. App. 1981); Indiana Dep't of Revenue v. Interstate Warehousing, 783 N.E.2d 248 (Ind. 2003); [45 IAC 2.2-5-8](#).

Taxpayer protests its refund denial.

STATEMENT OF FACTS

Taxpayer is an Indiana manufacturing company. Taxpayer submitted a refund claim on several transactions which Taxpayer claimed the manufacturing exemption and the exemption to safety equipment of sales tax for tax years 2013-2015. The Indiana Department of State Revenue ("Department") partially approved the claim for refund and only denied refund of tax paid on a mist collector. Taxpayer protested the denial. Taxpayer failed to appear, but timely requested a rehearing. A rehearing was held on Taxpayer's protest and this Supplemental Final Order Denying Refund ensues. Additional facts will be provided as necessary.

I. Sales and Use Tax - Safety Exemption.

DISCUSSION

The Department denied Taxpayer's claim for refund of use tax paid for the mist collector because the mist collector "is considered to be a post-production item." Taxpayer argues that the mist collector was exempt under a safety exemption as stated in [45 IAC 2.2-5-8\(c\)\(2\)\(F\)](#).

As a threshold issue, it is the Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made."

Indiana imposes an excise tax called "the state gross retail tax" (or "sales tax") on retail transactions made in Indiana. IC § 6-2.5-2-1(a). A person who acquires property in a retail transaction (a "retail purchaser") is liable for the sales tax on the transaction. IC § 6-2.5-2-1(b).

Indiana also imposes a complementary excise tax called "the use tax" on "the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction." IC § 6-2.5-3-2(a). Use means the "exercise of any right or power of ownership over tangible personal property." IC § 6-2.5-3-1(a).

An exemption from use tax is granted for transactions where the sales tax was paid at the time of purchase pursuant to IC § 6-2.5-3-4. There are also additional exemptions from sales tax and use tax. IC § 6-2.5-5 et seq.

When a taxpayer claims it is entitled to a tax exemption, it bears the burden of proving that the terms of the exemption have been met. *Indiana Dep't. of Revenue v. Interstate Warehousing*, 783 N.E.2d 248, 250 (Ind. 2003). The Department will strictly construe the exemption statutes against the taxpayer claiming the exemption. *Id.*

However, the general rule is that all purchases of tangible personal property by persons engaged in the direct production, manufacture, fabrication, assembly or finishing of tangible personal property are taxable. [45 IAC 2.2-5-8\(a\)](#). The exemption only applies to machinery, tools, and equipment directly used by the purchaser in direct production.

IC § 6-2.5-5-3 provides an exemption for equipment directly used in the direct production of tangible personal property. Further, in *Dep't of Revenue v. U.S. Steel Corp.*, 425 N.E.2d 659 (Ind. Ct. App. 1981), the court found that certain items of safety clothing qualified as "equipment" when directly used in the direct production of steel to protect the employees hands from extreme heat.

The focus of analysis should be whether the safety equipment is an integral part of the manufacturing and operates directly on the product during production. . . . Unlike equipment designed to protect a worker from various injuries on the job or to provide a healthful job environment, U.S. Steel's safety equipment was one of the tools used by workers to accomplish the job.

425 N.E.2d at 664.

Also, [45 IAC 2.2-5-8\(c\)](#), example (2), states in relevant part:

The following types of equipment constitute essential and integral parts of the integrated production process and are, therefore, exempt. The fact that such equipment may not touch the work-in-process or, by itself, cause a change in the product, is not determinative.

. . .

(F) Safety clothing or equipment which is required to allow a worker to participate in the production process without injury or to prevent contamination of the product during production.

Taxpayer argues that the mist created during the manufacturing process made the factory foggy, the walls dirty, and the floor slippery. Taxpayer states the mist collector reduces the dispersion of mist and creates a "safe and healthful workplace for [its] employees" as required by the Occupational Health and Safety Act of 1970. Taxpayer provided the following documentation: an invoice showing that use tax was accrued on the mist collector, product description from various other suppliers of mist collectors, another mist collector supplier's testimonial stating that the mist collector removes slippage on the floors, and a brief description of the mist collector that was actually purchased by Taxpayer.

In this case, the mist collector is not directly used in the direct production of Taxpayer's product. The mist collector clearly is used in the direct production process and qualifies for the exemption, but the mist collector is one step removed from the production process. Therefore, the mist collector itself does not pass the "double direct test" required by IC § 6-2.5-5-3(b), and the Department's determination that the purchase of the mist collector is subject to use tax was correct.

Taxpayer however failed to provide information or documentation as to how the mist collector was used as a tool by employees to accomplish their job, as required by *U.S. Steel Corp.* Thus, Taxpayer failed to meet its burden under IC § 6-8.1-5-1(c). Taxpayer's refund request for sales/use tax paid on the mist collector is denied.

FINDING

Taxpayer's protest is denied.

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